IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/07/2002

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

S.A.No.1824 of 1989

1. Sowbakiam Ammal
2. Vijayalakshmi
3. Vijayabalan
4. Karunanithi
5. Nallathambi
6. Minor Adinarayanan
7. Minor Sanchala .. Appellants

rep.by mother & next friend
1st appellant

-VS-

1. Pownambal Ammal
2. Poorani
3. Neelavathi
4. Anjalai
5. Sengalvarayan
6. Thaiyalnayaki .. Respondents

Second appeal against the judgment and decree dated 28.4.1989 in A.S.No.71 of 1988 on the file of the Subordinate Judge, Cuddalore, confirming the decree and judgment dated 26.2.1988 in O.S.No.718 of 19 82 on the file of the District Munsif, Panruti.

!For appellants : Ms.Nilophar
for Mrs.Hema Sampath

^For respondent-1 : Mr.R.Subramanian
For other respondents : No appearance

:JUDGMENT

The appellants in the above second appeal, who are defendants-7 to 1 3 in O.S.No.718 of 1982, on the file of the District Munsif, Panruti, are the legal representatives of one Thillai Govinda Padayachi, the first defendant in the said suit, laid by the first respondent/ plaintiff, who is nonetheless the wife of Arumugha Padayachi, for partition of her share, separate possession

and for mesne profits. Whereas Arumugha Padayachi and the said Thillai Govinda Padayachi, are brothers.

2. Respondents-2 to 6 are defendants-2 to 6 in the suit, whereas, defendants-2 and 3 are sisters of Arumugha Padayachi and Thillai Govinda Padayachi; and the fourth defendant is said to be the second wife of Arumugha Padayachi and the fifth and sixth defendants are said to be the children of Arumugha Padayachi through the second wife.

3. Admittedly, the suit property originally belonged to one Manicka Padayachi, who is nonetheless the father of Arumugha Padayachi, Thillai Govinda Padayachi and defendants-2 and 3/respondents-2 and 3 in this appeal.

4. Alleging that Arumugha Padayachi died in the year 1965 and the first respondent/plaintiff was living jointly under the same roof along with Thillai Govinda Padayachi, his wife and children, and defendants-2 and 3, who are sisters of Arumugha Padayachi and Thillai Govinda Padayachi, the first respondent/plaintiff seeks partition of the suit property, claiming 5/12th share.

5. The suit was resisted by the respondents, particularly, the legal representatives of Thillai Govinda Padayachi, viz., defendants-7 to 13, who are the appellants herein, on the ground that the suit properties were purchased under Ex.B6, B14 and B19 in the name of Thillai Govinda Padayachi. Except Item Nos.19 and 22 of the suit property, other items, viz., Item Nos.1 to 18, 20 and 21 of the suit property were purchased directly in the name of Thillai Govinda Padayachi under Ex.B6, B14 and B19 under separate sale deeds, which were after the earlier partition said to have taken place on 9.5.1955, and therefore, it was contended that except Item Nos.19 and 22 of the suit property, all other properties viz., Item Nos.1 to 18, 20 and 21 are not entitled to be partitioned, as claimed by the first respondent/plaintiff.

6. Upon the above rival contentions, the trial Court framed the following relevant issues:
i Whether the suit property was purchased out of the nucleus of the joint family properties of the plaintiff and the defendants?
ii. Whether the plaintiff is the legally wedded wife of Arumugha Padayachi?
iii. Whether there was an oral partition on 9.5.1955?
iv. Whether the plaintiff is entitled for mesne profit from the defendants?
v. To what extent the plaintiff is entitled for share in the suit property?

7. To substantiate their respective pleas, the plaintiff examined himself as P.W.1 along with one Rengasamy as P.W.2 and marked two documents viz., Exs.A1 and A2. The first defendant examined himself as D.W.1 along with Anjalai Ammal (fourth defendant), who is said to be the second wife of Arumugha Padayachi and through them, marked 19 documents as Exs.B1 to B19.

8. After appreciating the oral and documentary evidence, the learned District Munsif, Panruti, by judgment and decree dated 26.2.1988 made in

O.S.No.718 of 1982, disbelieved the case of the defendants with regard to the oral partition said to have taken place on 9.5.1955, and held that all the items of suit properties are joint family properties, even though items 1 to 18, 20 and 21 were purchased in the name of Thillai Govinda Padayachi, after the death of Arumugha Padayachi in the year 1965, under Exs.B6, B11 and B19, which are sale deeds, as Thillai Govinda Padayachi was the only eldest male member of the joint family; and consequently, held that the first respondent/ plaintiff was entitled to 5/12th share in the property, taking note of the fact that respondents 2 and 3/ defendants 2 and 3, who are sisters of Arumugha Padayachi and Thillai Govinda Padayachi, were also entitled to 1/12th share each. Since the first defendant died during the pendency of the suit, his legal representatives were impleaded in the suit as defendants 7 to 13, who preferred an appeal, viz.A.S.No.71 of 198 8 on the file of the learned Subordinate Judge, Cuddalore, against the judgment and decree dated 26.2.1988 made in O.S.No.718 of 1982 on the file of the learned District Munsif, Panruti. The Appellate Court, by judgment and decree dated 28.4.1989 confirmed the decree and judgment of the learned District Munsif dated 26.2.1988. Hence, the above second appeal.

9. The only substantial question of law that was raised by the appellants/defendants in this second appeal is whether the Courts below is right in holding that the properties purchased under Ex.B19 in the name of Thillai Govinda Padayachi also belongs to joint family?

10. In this regard, learned counsel for the petitioner places reliance on Section 90 of the Indian Evidence Act, 1972, which reads as under. "Presumption as to documents thirty years old.- Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the

handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested."

10. Section 90 of the Indian Evidence Act referred to above, only deals with the admissibility of initial documents without proof. But, in my considered opinion, it has nothing to do with the question of relevancy to the facts and circumstances of an individual case, which must be determined in accordance with the rules regarding relevancy. In other words, though the documents are declared admissible in law, the credit to be given to them depends upon t he facts and circumstances on which the document is relied upon and the Court is vested with a judicial discretion to give credit to such documents, to meet the ends of justice, in its application.

11. In the instant case, even though Ex.B19 stands in the name of Thillai Govinda Padayachi is admissible in law, after careful appreciation of the oral and documentary evidence, since both the Courts below have, after appreciating the oral and documentary evidence, concurrently found that the oral partition said to have taken place on 9.5.1 955, was not proved, that after the death of Arumugha Padayachi in the year 1965, Thillai Govinda

Padayachi was the only eldest male member in the joint family, and therefore, Item Nos.1 to 18, 20 and 21 of the suit properties were purchased in his name, under Ex.B6, B14 and B19, and the purchase under the name of the eldest member of the Hindu Joint Family, by itself, would not confer any absolute title on Thillai Govinda Padayachi. Hence, the Courts below have rightly held that the properties governed under Ex.B19 is joint family property and the finding in this regard, by the Courts below, does not violate the principles envisaged under Section 90 of the Indian Evidence Act. Hence, the substantial question of law raised by the learned counsel for the appellants/defendants is answered in negative.

12. However, the Courts below, decreed that the first respondent/ plaintiff is entitled to 5/12th share, without taking into account, the entitlement of the shares of respondents r to 6/defendants 4 to 6. Therefore, I am obliged to interfere with the decree and judgment of the Courts below only to the extent that the first respondent/ plaintiff, along with respondents 4 to 6/ defendants 4 to 6, are entitled to 5/12th share in the suit property through Arumuga Padayachi, and consequently, respondents 4 to 6/defendants 4 to 6, shall work out their rights out of the 5/12th share in the suit property in the final decree, satisfying the learned District Munsif, Panruti.

13. The decree and judgment of the Courts below stands modified to the above effect and there shall be a decree and judgment accordingly.

The second appeal is disposed of accordingly. No costs.

Index: Yes
Internet: Yes
04.07.2002
ksv/kpl

To:
1. The Principal Subordinate Judge, Cuddalore.(with records)
2. The District Munsif, Panruti. (with records).

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